



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

January 11, 2005

REGISTERED MAIL  
R 237 329 163

US Army Corps of Engineers  
Attn: Tom Mueller, Chief  
Regulatory Branch  
PO Box 3755  
Seattle, WA 98124

Kariah Enterprises  
Attn: Mr. Mason Wolfe  
14300 NE 20<sup>th</sup> Ave D-102-193  
Vancouver, WA 98686

Re: Corps Reference No. 200400050 –Proposed fill for a residential subdivision on the south side of Main Street at NE 14<sup>th</sup> Street in Battle Ground, Clark County, Washington

Dear Mr. Mueller and Mr. Wolfe:

On January 21, 2004, Kariah Enterprises submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Clean Water Act (CWA) Section 401 Water Quality Certification (401 Certification) for this proposal. On March 15, 2004, the U.S. Army Corps of Engineers (Corps) issued a Public Notice of Application for Permit for an individual CWA Section 404 permit for the proposal. As described in the Corps' Public Notice, the project entails fill of approximately 4.52 acres of wetlands to construct Iron Horse Park, a 42-lot subdivision. The project proposes mitigation by enhancing a 13.88 acre site located adjacent to Salmon Creek, and construction of an upland buffer adjacent to 3.16 acres of avoided wetlands on the Iron Horse Park site. An individual 401 Certification is required for this project.

In an April 13, 2004 e-mail, Ecology notified the Corps of concerns regarding the wetland delineation and mitigation proposed for this project. On May 4, 2004, during a site visit with Mr. Ron Klump and Mr. Shawn Zinszer of the Corps, Ecology wetland scientist, Brad Murphy, observed that the wetland area on the Iron Horse Park site was much more expansive than Kariah Enterprises' wetland delineation indicated. In letters dated June 11, 2004 and November 30, 2004, Ecology asked Kariah Enterprises to provide new wetland delineations of both the project and mitigation sites.



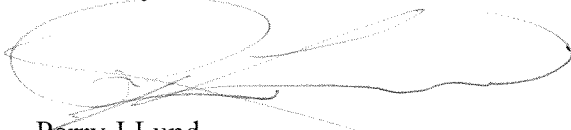
The requested information has not been submitted by Kariah Enterprises. On December 16, 2004, Ecology received a letter from LeAnne Bremer, an attorney representing the applicant, stating that Kariah Enterprises did not intend to provide new delineations.

Pursuant to Section 401 of the CWA, in order for Ecology to issue a water quality certification it must have reasonable assurance that the project as proposed will meet applicable water quality standards and other appropriate requirements of state law. Consequently, it is necessary that an applicant submit adequate information regarding a project for agency review before Ecology can determine compliance with the state water quality standards and other applicable regulations. Given the failure of Kariah Enterprises to do so in this instance, Ecology is unable, at this time, to certify that the present proposal will meet applicable water quality standards and other appropriate requirements of state law, as required by Section 401 of the CWA. Absent sufficient information that the wetlands on the site are accurately delineated and that the proposed mitigation adequately compensates for impacts to waters of the state, Ecology cannot certify this project under Section 401. Therefore, pursuant to Section 401 of the CWA, ch. 90.48 RCW and ch. 173-201A WAC, Kariah Enterprises' request for a water quality certification is denied without prejudice.

Any person aggrieved by this 401 Certification may obtain review thereof by appeal, within thirty (30) days of receipt of this 401 Certification, to the Washington Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, P.O. Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Please contact Jo Sohneronne (360-407-6926) of my staff if you have any questions or would like more information.

Sincerely,



Perry J Lund  
Unit Supervisor  
Shorelands and Environmental Assistance Program  
Southwest Regional Office

PJL:JS:dn

cc: Ron Klump, Corps Project Manager  
LeAnne Bremmer, Miller Nash LLP  
Brian Carraco, City of Battle Ground